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| 09/816,601 | 03/23/2001 | Masaki Ueno | 73600.P029 | 6171 |

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| EXAMINER | |
|---|---|
| FALASCO, LOUIS V | |
| ART UNIT | PAPER NUMBER |
| 1773 | 14 |

DATE MAILED: 01/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application N . | Applicant(s) | |
|---|---|---|---|
| | 09/884,534 | DECLERCQ ET AL. | |
| | Examiner | Art Unit | |
| | Gregory R. Del Cotto | 1751 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-41* is/are pending in the application.

4a) Of the above claim(s) *26-35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,17-25 and 36-41* is/are rejected.

7)☒ Claim(s) *15 and 16* is/are objected to.

8)☒ Claim(s) *1-41* are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

1. Claims 1-41 are pending.

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-25 and 36-41 drawn to a liquid rinse-added fabric care composition, classified in class 510, subclass 281.

II. Claims 26-35, drawn to a method of imparting a fabric care benefit to a fabric during a laundering process, classified in class 8, subclass 137.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the invention of Group I can be used in a materially different method such as in a method of cleaning hard surfaces.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with David Upite on 11/14/03, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-25 and 36-41. Affirmation of this election must be made by applicant in replying to this Office action. Claims 26-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 5-8, 10, 36, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by WO00/24852.

'852 teaches a detergent composition suitable for use in the kitchen or bathroom, as well as in the washing of soiled fabrics. This task is solved by a liquid cleaning agent or detergent composition that in a state of rest separates into at least two aqueous phases with a content of at least one surfactant in a concentration of less than 10% by weight and a content of at least one electrolyte in a concentration of less then 15% by weight, with a stipulation that the composition contains less than 10% by weight organic solvent and less than 6% by weight sodium hexametaphosphate. See page 4, lines 15-25. The electrolyte contains at least one acid. Suitable acids include phosphoric acid, amidosulfonic acid, and mixtures of these acids. The preferred surfactants are chosen from the group consisting of quaternary ammonium salts, amines, amine oxide, betaines, sulfobetaines, and mixtures of these compounds. See page 5, lines 1-15.

If such a composition is shaken or thoroughly mixed before or during use, a dispersion results that enables homogeneous application to the surface or substrate. In a state of rest, this dispersion separates relatively quickly to form separate aqueous phases, both on the surface or the substrate as well as in the supply container. See page 6, lines 1-15. Besides the specifically claimed builders or builder substance or alkaline or alkalinizing compounds, other compounds or mixtures that have a

corresponding cleaning action toward inorganic soils are suitable for the invention. See page 7, lines 30-35. Fragrances and colorants may also be added to the composition. See page 8, lines Specifically, '852 teaches a two phase composition in which the following sequence of adding to components to water is clearly advantageous: Water; electrolytes (acid(s), sodium chloride); surfactant; fragrances; dye(s); sodium cumenesulfonate. See page 10, lines 1-15. Accordingly, the broad teachings of '852 anticipate the material limitations of the instant claims.

Claims 9 and 22-25 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 00/24852.

'852 is relied upon as set forth above. With respect to the ratio of first and second phases and other physical parameters of the composition as recited by the instant claims, the Examiner asserts that the compositions of '852 would inherentely have the same ratio and physical parameter as recited by the instant claims because '852 teaches compositions containing the same components in the same proportions as recited by the instant claims.

Alternatively, even if the broad teachings of '852 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed ratio and physical parameters of the composition in order to provide the optimum cleaning properties to the composition since '852 teaches that the amount and types of components added to the composition may be varied.

Claims 11-14 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/24852 in view of 462,806.

'852 is relied upon as set forth above. However, '852 does not teach the use of a fabric softening agent in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

'806 teaches a process and composition for treating fabrics to reduce the amount of dye released from colored fabrics during wet treatments such as washing and rinsing processes. The compositions comprise 0.01 to 25% by weight of a cationic dye fixing agent, a detergent active, and a cationic fabric softening compound. See page 2, line 50 to page 3, line 3.

It would have been obvious to one or ordinary skill in the art, at the time the invention was made, to use a fabric softening agent in the cleaning composition taught by '852, with a reasonable expectation of success, because '806 teaches the use of a fabric softening compound in a similar laundry detergent composition and, further, fabric softening agents are desirable ingredients for laundry detergent compositions

Claims 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/24852.

'852 is relied upon as set forth above.

Note that, the Examiner asserts that the broad teachings of '852 would suggest the conventional containers for the detergent compositions as recited by the instant claims.

'852 does not specifically teach the use of the specific container for the cleaning composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use the specific container for packaging the detergent composition as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '852 suggest the specific container for packaging the detergent composition as recited by the instant claims.

Claims 1, 3, 5, 6, 8, 36, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 723,005.

'005 teaches a cleaning and dusting composition for aerosol or non-aerosol application which comprises from about 5% to about 40% by weight of a paraffinic or naphthenic oil, from about 0.5% to about 20% by weight of a petroleum solvent, from about 0.5 to about 20% by weight of a terpene, a sufficient amount of a glycol ether to improve cleaning properties while maintaining the oil-out-emulsion, from about 0.1% to about 2% by weight of an emulsion system comprising a low HLB emulsifier, and water. See page 3, lines 1-15.

Specifically, '005 teaches an oil-in-water composition containing 18% Sunpar LW 107, 17.1% Isopar E, 2.4% orange terpene, 0.5% hexyl cellusolve, 0.26% sorbitan sesquioleate, 0.05% Igepal 710, 0.06% preservative, 0.4% fragrance, 0.5% orange oil, 60.73% deionized water. See page 6, lines 30-50. Accordingly, the broad teachings of '005 anticipate the material limitations of the instant claims.

Claims 4, 9, and 22-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 723,005.

'005 are relied upon as set forth above. With respect to the ratio of first and second phases and other physical parameters of the composition as recited by the instant claims, the Examiner asserts that the compositions of '005 would inherentely have the same ratio and physical parameter as recited by the instant claims because '005 teaches compositions containing the same components in the same proportions as recited by the instant claims.

Alternatively, even if the broad teachings of '005 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed ratio and physical parameters of the composition in order to provide the optimum cleaning properties to the composition since '005 teaches that the amount and types of components added to the composition may be varied.

***Allowable Subject Matter***

Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

None of the references of record, alone or in combination, teach or suggest a cleaning composition containing a phase separation inducing polymer or a specific solvent in addition to the other requisite components of the composition in the specific proportions as recited by the instant claims.

***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
January 11, 2004